



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2010

Ms. Shirley Thomas
Senior Assistant General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2010-10362

Dear Ms. Thomas:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 386429.

The Dallas Area Rapid Transit ("DART") received a request for the report and photographs pertaining to a specified automobile accident. You state you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. You argue that the submitted information, which consists of photographs of deceased individuals at the scene of an accident, must be withheld under section 552.101 in conjunction with common-law privacy. We note, however, that privacy is a personal right that lapses at death, and thus common-law privacy is not applicable to information that relates only to a deceased individual. *See Moore v. Charles*

B. Pierce Film Enters. Inc., 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, *writ ref'd n.r.e.*); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). Accordingly, the submitted photographs may not be withheld on the basis of the privacy rights of the deceased individuals. Further, you have not demonstrated a living individual has a privacy right in the submitted photographs. See *Nat'l Archives & Records Admin. v. Favish*, 124 S. Ct. 1570 (2004). Therefore, the photographs of the deceased individuals may not be withheld under section 552.101 of the Government Code on the basis of common-law privacy. As you raise no further exceptions to disclosure, the submitted photographs must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tp

Ref: ID# 386429

Enc. Submitted documents

c: Requestor
(w/o enclosures)